

<b>Table Summarizing Individual Motions</b>		
<b>Motion</b>	<b>Moving Party</b>	<b>Burden of Proof</b>
<b>Adjournment or Continuance</b> See §6.10	Defendant or prosecuting attorney	Moving party must establish good cause for the adjournment or continuance.
<b>Alibi Defense—Notice and Pleading Requirements</b> See §6.11	Defendant	Defendant has the burden of producing at least some evidence in support of his claim of alibi, possibly sufficient evidence to raise a reasonable doubt.
<b>Arrest—Delay Resulting in Prejudice</b> See §6.12	Defendant	Defendant must come forward with evidence of actual and substantial prejudice to his or her right to a fair trial. Several appellate decisions have also required the defendant to show an intent by the prosecuting attorney to gain a tactical advantage. If the defendant makes the required showing, the prosecuting attorney must persuade the court that the reasons for the delay outweigh the resulting prejudice.
<b>Bail—Reduction or Increase</b> See §6.13	Defendant or prosecuting attorney. Court may also modify a prior release decision.	A party seeking modification of a release decision has the burden of going forward. Prior to arraignment on the information, a court may modify a release decision if there is a substantial reason for doing so. At arraignment on the information and afterwards, the court may review a release decision de novo. A party seeking review of a release decision must show that the lower court abused its discretion in setting bail.
<b>Competency to Stand Trial</b> See §6.14	Defendant. Court or prosecuting attorney may also raise the issue of competency.	Defendant must prove incompetency by a preponderance of the evidence. A defendant is incompetent to stand trial if he or she is incapable because of his or her mental condition of understanding the nature and object of the proceedings or of assisting in his or her defense in a rational manner.
<b>Compulsory Process or Appointment of Expert Witness at Public Expense</b> See §6.15	Defendant	Defendant must show that a witness's testimony will be material and favorable to the defense, that defendant cannot proceed safely to trial without the witness's testimony, and that defendant does not have the funds to pay for subpoenaing the witness.
<b>Confession or Other Evidence—Suppression Because of Illegal Prearrest Detention</b> See §6.16	Defendant	Defendant must come forward with evidence showing that the evidence in question was obtained as a result of a statutorily unlawful detention. If the defendant does so, the prosecuting attorney must prove the admissibility of the evidence.

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<b>Confession—Suppress Because Involuntary</b> See §6.17	Defendant	The prosecuting attorney must prove by a preponderance of the evidence that a confession was voluntary. A confession is voluntary if it is the product of an essentially free and unconstrained choice by its maker; a confession is involuntary if the defendant's will was overborne and his or her capacity for self-determination critically impaired.
<b>Confession—Suppress Because of <i>Miranda</i> Violation</b> See §6.18	Defendant	Before using a defendant's statements in its case-in-chief, the prosecution must make an affirmative showing that <i>Miranda</i> warnings were given prior to custodial interrogation and that a proper waiver was obtained. The prosecuting attorney must prove by a preponderance of the evidence that the waiver was voluntary, knowing, and intelligent.
<b>Confession—Suppress Because of Violation of Right to Counsel</b> See §6.19	Defendant	Before using in its case-in-chief a confession deliberately elicited from an accused following arraignment, the prosecuting attorney must show that police obtained a voluntary, knowing, and intelligent waiver of the Sixth Amendment right to counsel before they interrogated the accused.
<b>Counsel—Substitution or Withdrawal</b> See §6.20	Defendant or counsel for defendant	The moving party bears the burden of proof. An indigent defendant must show good cause for substitution of counsel.
<b>Discovery</b> See §6.21	Defendant, but may also be prosecuting attorney	The moving party has the burden of proving that the information sought is necessary to prepare a defense and to ensure a fair trial. If the defendant seeks privileged or confidential information, he or she must demonstrate a good-faith belief, grounded in articulable fact, that there is a reasonable probability that the records are likely to contain material information necessary to the defense before the court may order an <i>in-camera</i> inspection of the records. To be entitled to a remedy for a discovery violation, the moving party must show actual prejudice.
<b>Disqualification of Judge</b> See §6.22	Defendant or prosecuting attorney	The moving party has the burden of showing grounds for disqualification. Parties challenging a judge on the basis of bias, prejudice, or the right to an impartial tribunal bear a heavy burden of establishing those grounds.

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<b>Double Jeopardy—Successive Prosecutions for the Same Offense</b> See §6.23	Defendant	If the defendant makes a <i>prima facie</i> showing of a violation of the Double Jeopardy Clause, a second prosecution is barred unless the prosecuting attorney can show by a preponderance of the evidence why double jeopardy principles do not bar a second prosecution. If the defendant claims that a prosecution in Michigan is barred by MCL 333.7409; MSA 14.15(7409), the defendant must prove by a preponderance of the evidence that the statute bars a second prosecution.
<b>Double Jeopardy—Multiple Punishments for the Same Offense</b> See §6.24	Defendant	If the defendant makes a <i>prima facie</i> showing of a violation of the Double Jeopardy Clause, a second prosecution is barred unless the prosecuting attorney can show by a preponderance of the evidence why double jeopardy principles do not bar a second prosecution.
<b>Entrapment</b> See §6.25	Defendant	The defendant must prove a claim of entrapment by a preponderance of the evidence.
<b>Exclusion of Public and Press From Preliminary Examination</b> See §6.26	Defendant or prosecuting attorney	In cases involving sexual offenses or misconduct, the moving party must show that the need to protect a victim, witness, or defendant outweighs the public's right of access to the examination. Denial of access to the examination must be narrowly tailored to accommodate the interest being protected.
<b>Exclusion of Public and Press From Trial</b> See §6.27	Defendant or prosecuting attorney	The moving party bears a heavy burden of proving a substantial probability that 1) prejudicial error depriving the defendant of a fair trial will result if the trial is open to the press and public, 2) closure will be effective in dealing with the danger, and 3) no alternative short of closure exists that would protect the defendant's right to a fair trial.
<b>Fruits of Illegal Police Conduct—Suppression</b> See §6.28	Defendant	The defendant must present evidence demonstrating the illegality, establish that the derivative evidence is the "fruit" of the illegality, and show that a substantial portion of the case against him or her is a "fruit of the poisonous tree." The prosecuting attorney must prove by a preponderance of the evidence that the evidence was free of the primary taint of a defendant's illegal arrest, or that the derivative evidence inevitably would have been discovered by lawful means, or that the evidence was discovered from a source wholly independent of the illegality.

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<b>Guilty Plea—Withdrawal</b> See §6.29	Defendant	The defendant has a right to withdraw a guilty plea before sentence if there was an error in the plea proceeding. If a plea has been accepted, the defendant must show that withdrawal is in the interest of justice. If the defendant makes this showing, the prosecuting attorney must show that withdrawal will substantially prejudice him or her because of reliance on the plea.
<b>Identification at Trial—Suppression Because of Illegal Pretrial Identification Procedure</b> See §6.30	Defendant	If counsel was not present, the prosecutor must establish that the procedure was not unduly suggestive. If counsel was present, the defendant has the burden of proving that the procedure was unduly suggestive. If a violation of the right to counsel occurred or the identification procedure was unduly suggestive, in-court identification of the defendant at trial is precluded unless the prosecuting attorney establishes by a preponderance of the evidence that the in-court identification is based on observations of the suspect other than the illegal pretrial identification procedure.
<b>Impeachment of Defendant by Prior Convictions</b> See §6.31	Prosecuting attorney	The prosecutor bears the burden of justifying admission of the evidence. If a prior conviction contains an element of dishonesty or false statement, evidence of the prior conviction is admissible if less than ten years have elapsed since the date of the conviction or the defendant's release from confinement, whichever is later. The trial court has discretion to admit evidence of prior convictions for impeachment purposes if the prior conviction is a theft offense punishable by imprisonment for more than one year and the time requirement stated above is satisfied. If the prior conviction is such a theft offense, the court must balance its probative value and prejudicial effect.
<b>Impeachment of Defendant by His or Her Silence</b> See §6.32	Defendant or prosecuting attorney	The general rule is that the party proffering evidence must establish its admissibility.
<b>Insanity Defense—Notice and Examination Requirements</b> See §6.33	Defendant	The defendant has the burden of proving the defense of insanity by a preponderance of the evidence. The trier of fact may find the defendant guilty but mentally ill if it is shown 1) that the defendant is guilty of an offense, 2) that the defendant was mentally ill at the time of the commission of the offense, and 3) that the defendant was not legally insane at the time of the commission of that offense. It appears that the prosecutor must prove these elements beyond a reasonable doubt.

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<b>Quash Information for Improper Bindover</b> See §6.34	Defendant	If the defendant challenges the factual sufficiency of the evidence presented at the preliminary examination, the defendant must establish that the examining magistrate abused his or her discretion in binding the defendant over for trial in circuit court. If the defendant challenges the bindover on legal grounds, the decision is reviewed for error.
<b>Rape Shield Statute—Admission of Evidence of Victim’s Prior Sexual Conduct</b> See §6.35	Defendant	If the defendant in a criminal sexual conduct case proposes to offer evidence of the victim’s past sexual conduct with the defendant or evidence of specific instances of sexual activity to show the source or origin of semen, pregnancy, or disease, the defendant must file a written motion and offer of proof within 10 days after arraignment. If the defendant proposes to offer evidence of a victim’s past sexual conduct with third persons to preserve his or her right of confrontation, the defendant must make an offer of proof as to the proposed evidence and demonstrate its relevance.
<b>Search and Seizure—Suppression of Evidence Because of Defective Search Warrant</b> See §6.36	Defendant	The defendant has the burden of proving by a preponderance of the evidence that an affiant knowingly and intentionally or with reckless disregard for the truth inserted false material in the affidavit supporting the search warrant. The defendant also has the burden of establishing his or her standing to challenge the search and seizure.
<b>Search and Seizure—Suppression of Evidence Seized Without a Search Warrant</b> See §6.37	Defendant	The burden of proof is on the prosecution to show that the search and seizure were reasonable and fell under a recognized exception to the warrant requirement. Where the prosecution relies on consent to justify a warrantless search and seizure, it has the burden to prove by a preponderance of the evidence that the consent was unequivocal and specific, and freely and intelligently given. The defendant has the burden of establishing his or her standing to challenge the search and seizure.
<b>Separate Trials of Multiple Defendants</b> See §6.38	Defendant or prosecuting attorney	When related offenses alleged against two or more defendants are joined for trial, a defendant who seeks severance bears the burden of clearly, affirmatively, and fully showing that joint trial will prejudice his or her substantial rights. A defendant may also seek severance of related offenses on the basis that severance is necessary to promote fairness to the parties and a fair determination of guilt or innocence. If the prosecutor seeks severance of the trial of multiple defendants charged with related offenses, he or she must show that severance is necessary to promote fairness to the parties and a fair determination of guilt or innocence.

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<b>Severance or Joinder of Multiple Charges Against a Single Defendant</b> See §6.39	Defendant or prosecuting attorney	Joinder or severance of related offenses, joinder of unrelated offenses, and severance of unrelated offenses that the defendant has not requested to be severed, may be granted upon a showing that severance or joinder is appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence.
<b>Similar Acts Evidence</b> See §6.40	Prosecuting Attorney	The prosecutor must provide reasonable notice of the general nature of evidence of other crimes, wrongs, or acts that he or she intends to introduce at trial, and the rationale for admitting the evidence. The prosecutor bears the burden of establishing the relevance of the proffered evidence. To be admissible, evidence of other acts must be offered for a purpose other than to show propensity to commit wrongdoing, relevant to an issue or fact of consequence at trial, and of probative value that is not substantially outweighed by its prejudicial effect.
<b>Speedy Trial—Dismissal</b> See §6.41	Defendant	Where the delay following a defendant's arrest is less than 18 months, the defendant bears the burden of showing prejudice by reason of the delay. After a delay of 18 months, prejudice to the defendant is presumed and the burden shifts to the prosecutor to rebut the presumption.
<b>Speedy Trial—Release on Personal Recognizance</b> See §6.42	Defendant or prosecuting attorney	The moving party has the burden of proof. A felony defendant who is shown to have been incarcerated for more than 6 months, and a misdemeanor defendant who is shown to have been incarcerated for more than 28 days, must be released on personal recognizance. The party opposing the motion has the burden to show good cause for delay. The prosecutor must show that periods of delay resulting from adjournments requested by the prosecutor should not be included in determining whether the defendant has been incarcerated for the requisite period.
<b>Speedy Trial—Dismissal or Sentence Credit for Violation of 180-Day Rule</b> See §6.43	Defendant	In order to invoke the 180-day rule, the defendant must show that he or she was an inmate of a Michigan correctional facility or in a local facility awaiting incarceration in a state prison. Once it is shown that a defendant covered by the rule has not been brought to trial within the 180-day period, the prosecution bears the burden of establishing good faith in readying the case for trial during the 180-day period.
<b>Venue—Change</b> See §6.44	Defendant or prosecuting attorney	The moving party has the burden to show good cause for a change of venue. The focus is on whether the moving party can secure a fair and impartial trial in the jurisdiction where the action is brought.

